

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JIMMY W.,

**Plaintiff,**

V.

**COMMISSIONER OF SOCIAL SECURITY,**

**Defendant.**

CASE NO. 3:20-cv-05793-BAT

**ORDER AFFIRMING THE  
COMMISSIONER'S FINAL DECISION  
AND DISMISSING THE MATTER  
WITH PREJUDICE**

Plaintiff appeals the denial of his application for Disability Insurance Benefits. He contends the ALJ erred by discounting the medical evidence and his testimony, misevaluating residual functional capacity (“RFC”), and mistakenly determining that plaintiff can perform past relevant work as a house sitter. Dkt. 15. The Court **AFFIRMS** the Commissioner’s final decision and **DISMISSES** the case with prejudice.

## BACKGROUND

Plaintiff is currently 55 years old, completed high school, and has worked as a parts salesperson and as a house sitter. Tr. 68, 200–01.<sup>1</sup> In May 2018, he applied for benefits, alleging disability as of March 29, 2018. Tr. 76, 78. His application was denied initially and on

<sup>1</sup> Plaintiff disputes that the ALJ cited substantial evidence to support concluding that plaintiff had past relevant work as a house sitter. Dkt. 15, at 9–14; see Tr. 26.

1 reconsideration. Tr. 77–90, 92–108. The ALJ conducted a hearing in June 2019, Tr. 33–74, and  
2 issued a September 2019 decision finding plaintiff to be not disabled, Tr. 17–26. As the Appeals  
3 Council denied plaintiff's request for review, the ALJ's decision is the Commissioner's final  
4 decision. Tr. 1–3.

5 **THE ALJ'S DECISION**

6 The ALJ found that plaintiff met the insured status requirements of the Social Security  
7 Act through December 31, 2022, and that plaintiff had not engaged in substantial gainful activity  
8 ("SGA") since the alleged onset date of March 29, 2018. Tr. 19. The ALJ found that plaintiff has  
9 the severe impairments of chronic headache, possibly migraine; major depressive disorder; and  
10 cervical facet arthritis. Tr. 19. The ALJ assessed an RFC of a full range of work at all exertional  
11 levels but with additional limitations: he can lift and/or carry from waist height, not from floor  
12 height; he can never climb ladders, ropes, or scaffolds; he can frequently stoop but never kneel,  
13 crouch, or crawl; he can frequently reach overhead; he can have occasional exposure to vibration  
14 and pulmonary irritants but should avoid all exposure to hazards, such as unprotected heights and  
15 moving machinery; he can perform tasks with a GED reasoning level of 3; he can have  
16 superficial contact with the public. Tr. 21. At step four of the disability evaluation process, the  
17 ALJ found that plaintiff can perform past relevant work as a house sitter and, therefore, that  
18 plaintiff is not disabled. Tr. 26. The ALJ based her determination that plaintiff had past relevant  
19 work as a house sitter on plaintiff's hearing testimony about earning approximately \$500 per  
20 week for taking care of a friend's property, which involved maintaining the cabin, cutting wood,  
21 and using a dozer to maintain the road; plaintiff's reported self-employment income from  
22 housesitting of \$9,071 in 2005 and \$15,154 in 2007; and the vocational expert's testimony that  
23

1 plaintiff's description of his self-employment comported with the position of "house sitter,"  
 2 DOT 309.367-010. Tr. 26, 41–42, 68, 187.

### 3 DISCUSSION

4 The Court will reverse the ALJ's decision only if it was not supported by substantial  
 5 evidence in the record as a whole or if the ALJ applied the wrong legal standard. *Molina v.*  
 6 *Astrue*, 674 F.3d 1104, 1110 (9th Cir. 2012). The ALJ's decision may not be reversed on account  
 7 of an error that is harmless. *Id.* at 1111. Where the evidence is susceptible to more than one  
 8 rational interpretation, the Court must uphold the Commissioner's interpretation. *Thomas v.*  
 9 *Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002).

10 The Court finds that the ALJ's evaluation of the medical evidence and plaintiff's  
 11 testimony, assessment of RFC, and determination regarding plaintiff's past relevant work as a  
 12 house sitter were supported by substantial evidence and free from harmful legal error.

#### 13 1. Evaluation of the Medical Evidence and Plaintiff's Testimony

14 Plaintiff contends that the ALJ misevaluated the opinions of treating neurologist Dr.  
 15 Youngbin Choi and treating headache specialist Dr. Minsoo Kang, as well as erroneously  
 16 discounted plaintiff's testimony, regarding the debilitating nature of plaintiff's persistent  
 17 headaches suffered since 2010. Dkt. 15, at 3–8. The Court disagrees.

##### 18 a. Opinions of Drs. Choi and Kang

19 When considering medical opinions (for applications filed on or after March 27, 2017),  
 20 the ALJ considers the persuasiveness of the medical opinion using five factors (supportability,  
 21 consistency, relationship with claimant, specialization, and other), but supportability and  
 22 consistency are the two most important factors. 20 C.F.R. §§ 404.1520c(b)(2), 416.920c(b)(2),  
 23 (c) (2017). The ALJ must explain in her decision how persuasive she finds a medical opinion(s)

1 and/or a prior administrative medical finding(s) based on these two factors. 20 C.F.R.  
2 §§ 404.1520c(b), 416.920c(b) (2017). The ALJ may, but is not required to, explain how she  
3 considered the other remaining factors, unless the ALJ finds that two or more medical opinions  
4 or prior administrative medical findings about the same issue are both equally well-supported  
5 and consistent with the record, but not identical. 20 C.F.R. §§ 404.1520c(b)(3), 416.920c(b)(3)  
6 (2017). And the new regulations eliminate the agency’s “treating source rule,” which gave  
7 special deference to treating doctors’ opinions. 82 Fed. Reg. at 5853.

8       The ALJ found Dr. Choi’s July 2018 opinion that plaintiff was severely debilitated by  
9 headaches, Tr. 632–34, to be unpersuasive because it was largely inconsistent with and largely  
10 unsupported by the objective medical evidence and plaintiff’s demonstrated functioning. Tr. 24–  
11 25. Presumably referring to Dr. Choi’s opinion that plaintiff’s headaches caused memory loss,  
12 confusion, and slurring of speech, Tr. 632, the ALJ noted that Dr. Choi did not perform  
13 psychological testing. Tr. 25. The ALJ therefore found persuasive the opinion of examining  
14 psychologist Dr. Jonathan Allison, who noted that there was no history of memory loss until  
15 recent complaints, noted that plaintiff demonstrated no significant symptoms during the  
16 examination, and found plaintiff’s memory and concentration to be intact. *Id.* The ALJ noted that  
17 Dr. Choi’s opinion was inconsistent with plaintiff’s physical functioning in that Dr. Choi opined  
18 that plaintiff needed to use an assistive device when engaging in occasional standing and walking  
19 even though plaintiff did not have one at the hearing and did not testify that he needed one.  
20 Tr. 25 (citing Tr. 632). The ALJ noted that Dr. Choi’s treatment notes do not document the  
21 frequency with which plaintiff’s symptoms wax and wane so they could not support his opinion  
22 that plaintiff would miss four or more workdays a month. Tr. 25 (citing Tr. 717–28). With  
23 respect to the objective medical record and plaintiff’s demonstrated functioning, the ALJ found

1 more persuasive the opinions of reviewing physicians Dr. Howard Platter and Dr. Louis Martin,  
2 whose opinions noted greater functionality than did Dr. Choi's opinion because, for example,  
3 plaintiff's brain MRIs and neurological examinations were normal; plaintiff was alert and  
4 oriented and demonstrated intact memory and concentration; and was regularly observed to be in  
5 no acute distress. Tr. 24 (citing Tr. 582, 583, 598, 602, 637, 639, 642, 664, 666, 675, 713, 725,  
6 731, 741, 745, 750, 787). The Court observes that plaintiff's alleged physical limitations are also  
7 contradicted by the July 2018 medical note that plaintiff injured himself during a trip to Northern  
8 California by jumping from a rock 30–35 feet into the water below. Tr. 673–74. Moreover, there  
9 is no indication from the medical record that plaintiff's chronic headaches, which began in 2010  
10 and with which he worked for years, increased in severity after the alleged onset date in March  
11 2018.

12 Plaintiff argues that the ALJ erred by failing to discuss headache specialist Dr. Kang's  
13 August 2018 treatment notes but cannot explain how Dr. Kang's observation that plaintiff should  
14 engage in headache "trigger avoidance" undermines the ALJ's evaluation of the medical  
15 evidence. Dkt. 15, at 7–8 (citing Tr. 642). Dr. Kang referred to "trigger avoidance" as one of  
16 numerous nonpharmacologic interventions to improve plaintiff's condition, alongside exercise,  
17 frequent hydration, regular diet, and stress management. Tr. 643. That is, Dr. Kang did *not*, as  
18 plaintiff implicitly argues, opine that plaintiff could perform work only if he avoided headache  
19 triggers. In fact, plaintiff cites *other* medical notes for *additional* headache triggers because the  
20 ones mentioned by Dr. Kang based on plaintiff's report—physical activities such as lifting or  
21 bending over and stress—appear to be addressed by RFC limitations such as lifting/carrying only  
22 from waist height and up; never climbing ladders, ropes, or scaffolds; never kneeling, crouching,  
23 or crawling; only occasional exposure to vibration and pulmonary irritants while avoiding all

1 exposure to hazards; and having only superficial contact with the public. *Compare* Dkt. 15 at 7–8  
 2 (citing opinions by Dr. Choi and Dr. W. Dale Overfield) *with* Tr. 641 (Dr. Kang’s notes) *and*  
 3 *with* Tr. 21 (ALJ’s RFC assessment). Dr. Kang stressed the importance of nonpharmacologic  
 4 interventions due to the “history and negative imagings as well as the normal physical  
 5 examination.” Tr. 643. In declining to discuss Dr. Kang’s opinion, the ALJ did not reject  
 6 “significant probative evidence” and therefore did not commit harmful error. *See Vincent ex rel.*  
 7 *Vincent v. Heckler*, 739 F.2d 1393, 1394–95 (9th Cir. 1984); *see also Howard ex rel. Wolff v.*  
 8 *Barnhart*, 341 F.3d 1006, 1012 (9th Cir. 2003). The Court cannot overturn the ALJ’s reasonable  
 9 interpretation of the medical evidence through extrapolating limitations gleaned from reading Dr.  
 10 Kang’s opinion in the light most favorable to plaintiff.

11       The Court finds that the ALJ’s evaluation of the medical evidence, including specifically  
 12 the opinions of Drs. Choi and Kang, was supported by substantial evidence and was free from  
 13 harmful legal error.

14           **b. Plaintiff’s Testimony**

15       Although plaintiff argues that the ALJ erred by discounting his symptom testimony, he  
 16 cites no support for this proposition other than noting that the ALJ misevaluated the opinions of  
 17 Drs. Choi and Kang. Dkt. 15, at 3–9. Because the Court affirms the ALJ’s evaluation of the  
 18 medical evidence, it also affirms the ALJ’s decision to discount plaintiff’s testimony for specific,  
 19 clear and convincing reasons. *Smolen v. Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996).

20       The ALJ found physician Dr. Platter’s non-examining opinion and psychologist Dr.  
 21 Allison’s examining opinion to be persuasive. Tr. 24–25. Dr. Platter noted several specific, clear  
 22 and convincing reasons to discount plaintiff’s symptom testimony. These included that plaintiff  
 23 repeatedly cited a cerebrospinal fluid (“CSF”) leak as the source of his headaches while all

1 imaging and medical opinions from 2010 onward have contradicted any past or present CSF  
 2 leak; plaintiff stated his headaches were not alleviated by medication while also reporting that  
 3 certain medications “worked very well”; and plaintiff referred to memory problems that were not  
 4 observed in Dr. Allison’s psychological examination or in numerous mental status examinations.  
 5 Tr. 85; *see, e.g.*, Tr. 497, 526, 533, 539, 568, 643, 648, 658–59, 725, 786.

6 The Court finds that the ALJ’s decision to discount plaintiff’s symptom testimony was  
 7 supported by substantial evidence and free from harmful legal error.

8 **2. Assessment of RFC**

9 Plaintiff argues that the ALJ’s RFC assessment was erroneous because it failed to include  
 10 limitations opined or suggested by Drs. Choi and Kang. The Court affirms the ALJ’s evaluation  
 11 of the opinions of Drs. Choi and Kang and therefore rejects plaintiff’s contention. The Court  
 12 finds that the ALJ’s RFC assessment was supported by substantial evidence and free from  
 13 harmful legal error.

14 **3. Determination Regarding Past Relevant Work as a House Sitter**

15 Plaintiff argues that the ALJ harmfully erred at step four by determining that plaintiff  
 16 could perform his past relevant work as a house sitter. The Court disagrees.

17 At step four of the sequential evaluation, the claimant has the burden of showing that he  
 18 does not have the residual functional capacity to engage in “past relevant work.” 20 C.F.R.  
 19 § 404.1520(e). A claimant’s prior work qualifies as “past relevant work” if it “was done within  
 20 the last 15 years, lasted long enough for [the claimant] to learn to do it, and was substantial  
 21 gainful activity.” 20 C.F.R. § 404.1565(a). Thus, the Ninth Circuit observed that “[a] job  
 22 qualifies as past relevant work only if it involved substantial gainful activity.” *Lewis v. Apfel*,  
 23 236 F.3d 503, 515 (9th Cir. 2001). “Substantial gainful activity” (“SGA”) is defined as “work

1 activity that involves doing significant physical or mental activities . . . that [a claimant does] for  
 2 pay or profit." 20 C.F.R. § 404.1572. "Earnings can be a presumptive, but not conclusive, sign of  
 3 whether a job is substantial gainful activity." *Lewis*, 236 F.3d at 515. A presumption that a  
 4 claimant engaged in SGA is made if a person's average monthly income from that activity  
 5 exceeds a certain average that is designated for each calendar year. 20 C.F.R. § 404.1574; *Keyes*  
 6 *v. Sullivan*, 894 F.2d 1053, 1056 (9th Cir. 1990).

7       The ALJ determined that plaintiff had past relevant work as a house sitter because the job  
 8 was performed within the past 15 years, was held for a sufficient length of time to learn the job,  
 9 and produced earnings consistent with SGA. Tr. 26. This determination was supported by  
 10 (1) plaintiff's hearing testimony that his friend paid him \$500 per week in self-employment  
 11 income in 2005 and 2007 for "living on his property and taking care of it," Tr. 41; (2) plaintiff's  
 12 self-employment earnings report of \$9,071 in 2005 and \$15,154 in 2007, Tr. 68; and (3) the  
 13 vocational expert's testimony that plaintiff's description of his self-employment duties  
 14 comported with the position of "house sitter," DOT No. 109.367-010, Tr. 187. In 2005, the  
 15 monthly SGA amount for non-blind individuals was \$830, and in 2007, the amount was \$900.  
 16 See <https://www.ssa.gov/oact/cola/sga.html>. This would mean that plaintiff reported earning  
 17 approximately \$2,000 per month in 2005 for approximately four-and-a-half months, and \$2,000  
 18 per month in 2007 for approximately seven-and-a-half months. It was not unreasonable,  
 19 therefore, for the ALJ to determine that both periods of SGA occurred within the last 15 years of  
 20 the ALJ's 2019 decision date, lasted long enough for plaintiff to learn the job, and was  
 21 performed at an earnings level that presumptively constituted SGA.

22       Plaintiff's arguments to the contrary are unpersuasive. First, plaintiff argues that the  
 23 record does not adequately establish how much plaintiff was individually paid, how consistently,

1 or for how long. Dkt. 15, at 10–11. This contention is undermined by plaintiff’s earnings record  
2 showing self-employment income of \$9,071 in 2005 and \$15,154 in 2007; plaintiff’s hearing  
3 testimony that the entirety of his self-employment income for those years came from being paid  
4 \$500 per week to take care of his friend’s property; and plaintiff’s failure to rebut the  
5 presumption of SGA from earning more than \$830 per month in 2005 and \$900 per month in  
6 2007.

7 Second, plaintiff argues that the record does not properly establish what duties plaintiff  
8 performed beyond chopping wood and running a dozer; the ALJ failed to reconcile how  
9 chopping wood exceeds the exertional level of a house sitter; and the decision should have found  
10 that plaintiff actually performed a composite job of chopping wood *and* house sitting. Dkt. 15, at  
11 11–14. These contentions are inapposite because it was not unreasonable for the ALJ to presume  
12 that plaintiff’s admission to being paid \$500 per week for “living on his [friend’s] property and  
13 taking care of it” and “property sitting,” Tr. 41, along with performing the incidental duties of  
14 chopping wood and running a dozer to maintain the road, was consistent with the vocational  
15 expert’s testimony that “house sitter includes taking care of the grounds and the property  
16 outside,” Tr. 70. Moreover, to the extent the ALJ erred by determining that plaintiff’s RFC  
17 enabled him to perform the job of house sitter as it was actually performed (including chopping  
18 wood and using a grader), such an error was harmless because the ALJ also determined that  
19 plaintiff could perform the job of house sitter as it is generally performed. Tr. 26.

20 The Court finds that the ALJ’s step four determination that plaintiff could perform his  
21 past relevant work as a house sitter was supported by substantial evidence and free from harmful  
22 legal error.

## CONCLUSION

The Commissioner's decision is **AFFIRMED** and this case is **DISMISSED** with prejudice.

DATED this 29th day of July, 2021.

  
BRIAN A. TSUCHIDA  
United States Magistrate Judge